

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
C. 1.. SMITH ENTERPRISES, INC.)

For Appellant: Norman P. Uchs, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 26080.1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in disallowing interest in the amount of \$524.16 on the claim of C. W. Smith Enterprises, Inc., for a refund of corporation income tax for the year ended July 31, 1959.

Appellant is a Michigan corporation engaged in the promotion- of sporting events and horse racing. It has adopted a fiscal year ending July 31, and its California tax returns are filed on that basis.

Appellant brought horses to this state and raced them during its fiscal year ended July 31, 1959. During that fiscal year it won purses at California racetracks. Pursuant to the requirements of Section 26131 of the Revenue and Taxation Code, the tracks withheld 4 percent of the purses. The withholdings were in the amounts of \$764 in the latter part of 1958 and \$7641 and \$13,306.63 in the early part of 1959. These sums were remitted to the Franchise Tax Board on March 9, 1959, January 27, 1960, and March 14, 1960, respectively.

After receiving an extension of time from Respondent, Appellant on December 14, 1959, filed its return for the year ended July 31, 1959, reporting a tax of \$2,635.06. On April 14, 1960, it filed an amended return, reporting a tax of \$7,015.52.

During the fiscal year ended in 1960, Appellant's counsel informed Respondent that because Appellant's principal winning horse had become disabled, the income for that fiscal year would not be substantial. On May 2, 1960, Respondent refunded to Appellant the amount of \$14,696.11. This was the difference between the total amount of \$21,711.63 withheld by the tracks and the tax liability of \$7,015.52 for the year ended July 31, 1959. No interest was paid on this refund.

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The sole issue to be decided is whether Appellant is entitled to interest on the refund of \$14,696.11.

Section 25401b of the Revenue and Taxation Code, during the period involved, provided as follows:

(1) For purposes of this part the amount deducted and withheld under Section 26131 during any calendar year shall be allowed to the bank or corporation from whom such amount was deducted and withheld as a credit against the tax imposed by this part.

(2) The amount so withheld during any calendar year shall be allowed as a credit for the income year beginning in such income year. If more than one income year begins in a calendar year, such amount shall be allowed as a credit for the last income year so beginning.

(3) For purposes of Section 26073, any tax actually deducted and withheld during any calendar year under Section 26131 shall, in respect of the bank or corporation from whom such amount was deducted and withheld, be deemed to have been paid by it on the fifteenth day of the third month following the close of its income year.

In accordance with the obvious intent of this section, the amount of \$764 withheld during the calendar year 1958 was to be credited against the tax for the year ended July 31, 1959. This was the income year that began in the calendar year 1958. (Rev. & Tax. Code, §§ 23041, 23042.) Similarly, the total amount of \$20,947.63 withheld in 1959 was to be credited against any tax that might have become due for the income year ended in 1960.

Since Appellant's tax liability for the year ended July 31, 1959, was \$7,015.52, the liability was not satisfied by the \$764 withheld in 1958. The liability was not satisfied until May 2, 1960, when Respondent, on the basis of information indicating that Appellant's tax for the year ended in 1960 would not be substantial, refunded the amounts withheld to secure taxes for that year and applied a portion of the refund against the established tax liability for the year ended in 1959. Thus, the taxes for the year ended in 1959 were not overpaid at any time. Interest is allowable only on overpayments. (Rev. & Tax. Code, § 26080.)

Appellant relies upon subdivision (3) of Section 25401b (supra) which provides that taxes withheld in any calendar year shall be deemed paid on the fifteenth day of the third month following the close of the income year. Appellant assumes from

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this that all of the amounts withheld were deemed paid on October 15, 1959, for the year ended July 31, 1959.

Subdivision (3), however, does not aid Appellant. Interpreting the subdivision consistently with the rest of Section 25401b, only the sum of \$764 withheld in the calendar year 1958 is to be deemed paid on October 15, 1959. The amounts withheld in the calendar year 1959, on the other hand, are not deemed paid until October 15, 1960, three months after the close of the year ended in 1960.

We conclude that the action of Respondent in disallowing interest must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 26080.1 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in disallowing interest in the amount of \$524.16 on the claim of C. W. Smith Enterprises, Inc., for a refund of corporation income tax for the year ended July 31 1959, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of December, 1962, by the State Board of Equalization.

_____, Chairman

John W. Lynch, Member

Paul R. Leake, Member

Richard Nevins, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary